

This record is a partial extract of the original cable. The full text of the original cable is not available.

ACTION EB-00

INFO	LOG-00	COR-00	NP-00	AF-00	AID-00	AMAD-00	CEA-01
	CIAE-00	CTME-00	INL-00	DODE-00	DOTE-00	PERC-00	EUR-00
	EXIM-01	E-00	FAAE-00	VC-00	FRB-00	TEDE-00	INR-00
	ITC-01	LAB-01	L-00	VCE-00	AC-00	NRC-00	NSAE-00
	NSCE-00	OES-00	OMB-00	NIMA-00	MCC-00	GIWI-00	ACE-00
	FMPC-00	SP-00	IRM-00	SSO-00	SS-00	STR-00	BBG-00
	EPAE-00	IIP-00	SCRS-00	DRL-00	G-00	NFAT-00	SAS-00
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FM AMEMBASSY NDJAMENA  
TO SECSTATE WASHDC 1737  
INFO AMEMBASSY ABUJA  
AMEMBASSY DAKAR  
AMEMBASSY LIBREVILLE  
AMEMBASSY LONDON  
AMEMBASSY NIAMEY  
AMEMBASSY PARIS  
AMEMBASSY YAOUNDE  
DEPT OF TREASURY WASH DC  
DOC WASHDC  
DOE WASHDC

C O N F I D E N T I A L NDJAMENA 000901

SIPDIS

DEPARTMENT FOR AF, AF/C, EB, LONDON AND PARIS FOR  
AFRICAWATCHER, TREASURY FOR OTA, ENERGY FOR GPERSON AND CGAY

C O R R E C T E D C O P Y - CLASSIFIED BY STATEMENT AND  
REASON ADDED

E.O. 12958: DECL: 06/07/2015

TAGS: [ECON](#) [ENRG](#) [EPET](#) [CD](#)

SUBJECT: ESSO CONTRACTOR IN COMMERCIAL DISPUTE

CLASSIFIED BY: KFITZGIBBON, REASON: 1.4(B)

11. (SBU) Summary: The Esso-led oil project is facing another commercial dispute involving one of its contractors. Members of a Chadian labor union took the contractor to court claiming the company did not pay them overtime salaries over a four-year period. According to Esso, TCC paid all of the salary payments due the workers and has the salary slips to prove it. TCC received a verbal judgment in its favor, but a second court subsequently changed the decision and ordered TCC to pay 12.5 million USD in compensation on May 23. The jubilant workers marched to the ruling Movement for Patriotic Salvation (MPS) headquarters to celebrate their court victory. However, the written judgment has apparently not yet been issued. Esso is concerned about the precedent the manipulated, and apparently politicized, court procedures will set for future investments. Esso officials have relayed their concerns and a written description of the facts of the case to the National Coordinator for the Doba Oil Project, Haroun Kabadi, on May 26. They explained the issues at stake to Embassy officials on June 1. The Ambassador met with Presidential Cabinet Director Mahamat Annadif June 3 to discuss the flawed court proceedings and their negative impact on U.S. investment. End Summary.

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CASE BACKGROUND  
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12. (SBU) On June 1, Esso's Public Relations Director Miles Shaw and Chief Negotiator Lindsey Peromdelon told the Ambassador and P/E officer about a serious commercial dispute between its contractor, TCC, which is a subsidiary of Kellogg, Brown, and Root, and its former workers. The origin of the dispute began in November 2004 when TCC began demobilizing its work force. The workers claimed that they had not been paid salaries for overtime. In 2001, TCC applied for and received approval for some of its workers to work more than the 39 hours and up to the 72 hours permitted by Chadian law. TCC kept within these regulations, and overtime payments for those employees working over 39 hours appeared in the employees' payslips. At the end of 2004, the workers claimed that TCC had not paid them overtime since 12001. They claimed that they should have received pay for the 33 hours difference between 39 and 72 hours even though they had not worked those 33 hours.

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TWISTS, TURNS, AND REVERSAL IN COURT  
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13. (SBU) The workers called for labor arbitration on the issue, while TCC claimed that the workers' charges were not valid. In February 2005, the President of the Labor Tribunal in N'Djamena referred the matter to the President of the

Chamber for Social Affairs. The judge determined that the issue was beyond the prescribed limits of time and wrote this on the side margins of the letter referring the matter to her. She did not write a full letter. The President of the Labor Tribunal held a hearing in late February 2005, but was transferred that month and a new President was appointed. The new judge appointed two assessors, one on behalf of the employees and a second for TCC. This judge was then transferred in April 2005. One of the assessors that had been appointed was Rakis Manani, the President of the Employers Union and Director of Star National Insurance Company. According to Manani, during two court hearings on May 10 and 12, the judge rejected the workers' claims on the grounds that he could not legally accept a collective claim from the employees. Manani told Esso that the judge and assessors found the case to be very unclear and therefore decided to reject it. However, no written judgment was given at the time.

14. (SBU) However, the court was reconvened on May 19, while Manani was traveling to Libya with President Deby. The court adjourned until May 23 at which time a new assessor was appointed to replace Manani. The hearing was set for the same day. TCC protested, but was overruled by the judge. The judge was presented with stolen TCC documents and information from its databases. A list was created with all of the employees names from 2000/2001, which included employees who had died and those who were not eligible for overtime, including TCC employees in N'Djamena. A

calculation was done for 33 hours of overtime not worked for all of these employees. This information was presented in court on forged TCC letterhead. The judge accepted it and ordered TCC to pay the employees 12.5 million USD. According to Esso, the written judgment has been issued.

15. (SBU) Press releases on the radio during the same week stated that the judgment was fair and equitable. On May 28, the TCC workers marched to the ruling Movement for Patriotic Salvation (MPS) headquarters in N'Djamena to celebrate and share their victory. On May 30, the Government newspaper featured a picture of the celebration and quoted several former TCC employees pledging to work together with the MPS. Others declared that they will join the ruling party as well as make a financial contribution to the referendum campaign. (Note: The ruling party had mobilized for the public referendum set for June 6 on constitutional amendments which would remove presidential term limits. End Note.) On May 30, another press release on the radio declared that TCC owed the workers money and that because TCC has closed in Chad, Esso has a moral obligation to pay the money.

16. (C) The story has another troubling political twist. One of the former TCC employees in the case is the current Minister of Labor, Mahamat Nour Mallaye. Esso described its past dealings with Mallaye as "very good". His role in the case is not yet clear, but Esso officials are surprised that Mallaye has not removed himself from the case due to conflict of interest.

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NEXT STEPS  
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17. (C) The written judgment can be appealed through a court in Abidjan. However, TCC would have to make the 12.5 million USD payment before the appeal is heard. According to Esso, it is unlikely TCC would ever get this money back, even with a favorable judgment. Based on its past experience with the Taylor case, Esso is concerned that once a written judgment is handed down, the court bailiffs will be on the doorstep of Esso because TCC has pulled out of Chad. Esso is considering its options at this point. Esso has presented all of the case documents to Haroun Kabadi, Coordinator for the National Petroleum Project at Doba, who in the past has been a key point of contact with access to President Deby for Esso. The Ambassador told Esso that he would see what could be done prior to the judgment being issued in writing.

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CABINET DIRECTOR LOOKING INTO ISSUE  
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18. (C) Following the meeting with the Esso representatives, the Ambassador requested a meeting with the Minister of Justice, but that minister, like all other ministers, was outside N'Djamena campaigning for a "yes" vote on the public referendum. On June 3, the Ambassador and P/E officer met with President Deby's Cabinet Chief, Mahamat Saleh Annadif, to raise the issue of the TCC labor dispute, the flawed judicial process, and its implications for future foreign investment in Chad. The Ambassador explained that TCC had documented the salary payments, but that the decision of the arbitrator in a dubious court process was against TCC. The Ambassador gave Annadif a copy of the documents related to the case and expressed hope that a solution could be found before the rendering of a written decision. The Ambassador

also showed Annadif the photograph of the TCC employees rallying for a "yes" vote on the referendum in the government newspaper. The Ambassador also told Annadif that if a solution cannot be found for the case, it would send a bad signal to other potential investors. Annadif appeared to quickly grasp the consequences of the situation and promised to read the case information carefully.

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COMMENT  
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19. (C) We will continue to follow up on this case with relevant government officials, such as the Minister of Justice. As of June 7, Esso representatives told us they

understood the judgement has been drafted, but had not yet seen the decree. If the case stands, it will send the wrong signals to U.S. and other outside investors. First, the retroactive attempt by former employees to extort salary payments when no work was performed means that no U.S. company can be sure that it will not be taken to court by labor unions for the same reasons. Second, the apparent manipulation of the judicial process against a partner of a major foreign investor in a key sector also means that no company is safe from political harassment. Finally, because TCC has left Chad, Esso, as the primary contractor, will be forced to pay on behalf of its contractor, a creeping expropriation that Esso fears could become the norm, rather than the exception.

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